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2 **BEFORE THE FEDERAL ELECTION COMMISSION**

3
4 In the Matter of)
5)
6 Madrid for Congress and Rita Longino,) MUR 5815
7 in her official capacity as Treasurer)
8)
9 Patricia Madrid)
10)
11 The State of New Mexico)
12)
13

14 **GENERAL COUNSEL'S REPORT #2**

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16 **I. ACTIONS RECOMMENDED**

17 Take no further action against Patricia Madrid and Madrid for Congress and Rita
18 Longino, in her official capacity as Treasurer; dismiss the State of New Mexico; and
19 close the file.

20 **II. BACKGROUND**

21 This matter involves allegations that Patricia Madrid and her campaign
22 committee, Madrid for Congress and Rita Longino, in her official capacity as Treasurer
23 ("the Committee"), violated the Federal Election Campaign Act of 1971 (the "Act"), as
24 amended by the Bipartisan Campaign Reform Act of 2002 ("BCRA"). Ms. Madrid was
25 the Attorney General for the State of New Mexico in 2006.¹ Ms. Madrid was also a
26 candidate for a seat in the United States House of Representatives for New Mexico's 1st
27 Congressional District in 2006.

28 At issue is whether a mailer entitled "Meth Lab" disseminated by Ms. Madrid in
29 her capacity as Attorney General of the State of New Mexico was coordinated with Ms.

¹ Ms. Madrid was first elected Attorney General in 1998 and re-elected in 2002. Her last term in office ended in 2006.

1 Madrid or her campaign committee. If so, the costs of the mailer would be an in-kind
2 contribution from the State of New Mexico to the Committee that exceeds the
3 contribution limitations at 2 U.S.C. § 441a(a)(1)(A).

4 Applying the coordination regulations at 11 C.F.R. § 109.21, the Commission
5 concluded the State of New Mexico may have made, and the Committee may have
6 knowingly accepted, an in-kind contribution in the form of a coordinated
7 communication.² See 11 C.F.R. § 109.21(b)(2). Consequently, the Commission found
8 reason to believe Madrid for Congress and Rita Longino, in her official capacity as
9 Treasurer, may have violated 2 U.S.C. §§ 441a(f) and 434(b) by knowingly accepting the
10 excessive contribution and failing to report it. In addition, because Ms. Madrid may have
11 had a direct role in making the excessive contribution because the Attorney General's
12 Office of the State of New Mexico, of which she was the top official, disseminated the
13 mailer, the Commission also found reason to believe that Ms. Madrid, as a Federal
14 candidate, may have knowingly received funds in connection with her candidacy that
15 exceeded the applicable contribution limitation in the Act, in violation of 2 U.S.C.

² As discussed in the First General Counsel's Report, the payment prong of the coordination regulation, 11 C.F.R. § 109.21(a)(1), was satisfied because the mailer was paid for by the State of New Mexico, that is, a person other than a candidate, the candidate's committee, a political party committee, or any of their agents. The content prong, 11 C.F.R. § 109.21(c), was likely satisfied because "Meth Lab" was a mass mailing, and therefore, a public communication, and the mailer contains a clearly identified federal candidate's (Ms. Madrid's) name and photograph, and may have been directed to New Mexico voters within 90 days of the November 7, 2006 General Election. Finally, there was a basis to investigate whether the conduct prong was met because there was no dispute that the Attorney General's Office, of which Ms. Madrid was the top official, disseminated the mailer. The Commission concluded that as the top official, Ms. Madrid may have requested or suggested that the communication be created, produced or distributed, or may have been materially involved in decisions regarding, or had substantial discussions about, pertinent aspects of the communication.

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1 § 441a(a)(1). The Commission decided to take no action at that time with respect to the
2 State of New Mexico.³

3 **III. RESULTS OF THE INVESTIGATION**

4 The Commission conducted a limited investigation in this matter in order to
5 determine whether the conduct prong of the coordinated communications regulations had
6 been met and to ascertain the cost of producing and disseminating the Meth Lab mailer.
7 The information provided by the Respondents during the course of the investigation,
8 including their responses to interrogatories and statements from Ms. Madrid and the
9 public information officer for the New Mexico Attorney General's Office, revealed that
10 the conduct prong is not met in this matter.

11 In September 2005, the New Mexico Attorney General's Office contracted with
12 Griffin and Associates, Inc. to develop and promote a consumer education and public
13 safety multi-media program. Aff. of Patricia Madrid ("Madrid Aff.") at ¶ 2, Attachment
14 2, p. 1. Prior to the execution of the contract, Ms. Madrid attended a meeting with the
15 president of Griffin and Associates and Sam Thompson, the public information officer
16 for the New Mexico Attorney General's Office, at which the general parameters of the
17 media program were discussed. Madrid Aff. at ¶ 4, Attachment 2, p. 1. Ms. Madrid does
18 not recall having any other meetings or discussions with Griffin and Associates before or
19 after declaring her candidacy for federal office in October 2005. *Id.* Ms. Thompson had
20 the responsibility as part of her job to deal with Griffin and Associates to implement the
21 contract. *Id.*

1 The Attorney General's Office was significantly involved in the prevention and
2 prosecution of methamphetamine and related crime for an extended period of time
3 predating Ms. Madrid's candidacy for the U.S. Congress, and the distribution of the
4 "Meth" mailer, which cost \$118,871.01, was a part of that on-going effort. Madrid Aff.
5 at ¶ 5, Attachment 2, p. 1-2; Answers to Written Questions, Attachment 1, p. 4. Ms.
6 Madrid did not request or suggest that Ms. Thompson create the Meth Lab mailer.
7 Declaration of Sam Thompson ("Thompson Decl.") at ¶ 4, Attachment 1, p. 6. Ms.
8 Madrid also was not materially involved with the creation, production and dissemination
9 of the Meth Lab mailer, and we do not have information indicating that she was involved
10 in any discussions regarding the mailer. Madrid Aff. at ¶ 7, Attachment 2, p. 2;
11 Thompson Decl. at ¶ 4, Attachment 1, p. 6.

12 The only information we have regarding Ms. Madrid's involvement with the Meth
13 Lab mailer is that a photograph was taken of her and used in the mailer. Answers to
14 Written Questions, Attachment 1, p. 5. Ms. Madrid believes the photograph was taken in
15 July 2006 – the month before the Meth Lab mailer was disseminated. Madrid Aff. at ¶ 6,
16 Attachment 2, p. 2. However, Ms. Thompson made any decisions concerning the
17 photograph, including arranging and coordinating the taking of photographs for the Meth
18 Lab mailer. Madrid Aff. at ¶ 6, Attachment 2, p. 2. Ms. Madrid did not have discussions
19 with Ms. Thompson regarding whether Ms. Madrid's photograph would appear on the
20 Meth Lab mailer. Madrid Aff. at ¶ 7, Attachment 2, p. 2; Thompson Decl. at ¶ 4,
21 Attachment 1, p. 6. In addition, Ms. Madrid did not receive any drafts or give final
22 approval regarding the Meth Lab mailer and Ms. Thompson made the final determination
23 regarding the timing of the dissemination of the mailer. Madrid Aff. at ¶ 7, Attachment

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2, p. 2; Thompson Decl. at ¶ 5, 6, Attachment 1, p. 6. Further, we note that the Meth Lab mailer was disseminated statewide and not confined to the congressional district in which Ms. Madrid was running. In summary, the investigation revealed that Ms. Madrid did not request or suggest that the Meth Lab mailer be produced and she was not materially involved in, and did not have substantial discussions about, the mailer at issue.

In light of the foregoing information, we conclude that the conduct prong of the coordinated communications regulations has not been met. Therefore, we recommend that the Commission take no further action against Patricia Madrid and Madrid for Congress and Rita Longino, in her capacity as Treasurer, and dismiss the State of New Mexico, as to which the Commission never made any findings.

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IV. RECOMMENDATIONS

1. Take no further action against Patricia Madrid and Madrid for Congress and Rita Longini, in her official capacity as Treasurer.


2. Dismiss the State of New Mexico.

3. Approve the appropriate letters.

4. Close the file.

Thomasenia P. Duncan
General Counsel

3-31-08
Date

BY: 
Kathleen Guith
Acting Associate General Counsel
for Enforcement


Julie Kara McConnell
Assistant General Counsel


Tracey L. Ligon
Attorney